IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

Crl.MC.No. 2717 of 2004(D)

CRMP.7823/2004 IN CC.1002/04 of JUDL. MAGI. OF FIRST CLASS-I (FOREST OFFENCES), THODUPUZHA

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PETITIONER:

JOSE MATHEW, S/O.MATHAI, PUNNASSERIL HOUSE, MUNDUNADA BHAGAM, KURINJIKKARA, PARAPPUZHA VILLAGE, THODUPUZHA.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM (CRIME NO.139/1993, OF KARIKUNNAM POLICE STATION).

BY ADV. SRI. C.M. KAMMAPPU, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. M.C. NO. 2717 OF 2004

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Dated this the 11th day of January 2007

O R D E R

The petitioner, who is the 1st accused in C.C. No. 1002/2004 in the court of Judicial First Class Magistrate, Thodupuzha, has sought for setting aside the order of the court below rejecting his prayer for granting exemption from personal appearance vide application filed under section 317 Cr.P.C. It is the case of the petitioner that he is employed in the Middle East and he is unable to be present in the the court right now and if he leaves his workspot he would be rendered unemployed. The rest of the accused were acquitted. The charge is under sections 498 A, 420, 380, 109, 499 r/w 34 IPC. It is submitted that he had surrendered before the court below on 21.07.2004 and was enlarged on bail. He was also present on the subsequent posting date. But thereafter he had to join duty and hence could not be present. It was in the above circumstances that he has filed an

application for exemption from personal appearance. It is submitted that he shall appear whenever specifically ordered. He wants to plead not guilty through counsel.

2. The court below has dismissed the application on the ground that the case involved is with respect to a serious offence and hence his attitude of leaving country without getting permission from the court was improper. The court has noted the decision of Superme Court in **Bhaskar Industries Ltd., v. Bhiwani Denim & Apparels Ltd.,** (2001 (3) KLT 307 (SC)) as well as the decision of this Court in **Noorjahan v. Moideen** (2000 (2) KLT 756), but was not inclined to follow the same. I find that the decision of Supreme Court as well as of this Court, the above cited, is clearly to the effect that even in a warrant case exemption can be granted provided that the petitioner/accused undertakes to the satisfaction of the court that he would not dispute his identity and that the counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence. The petitioner has filed an application undertaking as above. The offence under section 498 A is the offence involved in **Noorjahan's** case (op. cit) as well.

3. In the circumstances, the order of the court below is herewith set aside. The court below is directed to permit the counsel to represent the petitioner and plead guilty on his behalf and further proceed with the trial.

The Crl. M.C. is allowed accordingly.

K.R. UDAYABHANU, JUDGE.

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